IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20410 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V.N.TALWANI RETIRED JOINT DIST. JUDGE - Petitioner(s)
Versus
REGISTRAR & 2 - Respondent(s)

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Appearance :
MR UTPAL M PANCHAL for Petitioner(s) : 1,
MR JB PARDIWALA for Respondent(s) : 1 & 2,
MR SIRAJ GORI, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Rule. Learned Counsel Shri Pardiwala waives service for the respondent No.1 – High Court and

respondent No.2 – District Judge, Ahmedabad (Rural) and learned A.G.P. Shri Siraj Gori, waives service for respondent No.3 – State of Gujarat.

The petitioner was Judicial Officer. He had retired from service as Joint District Judge on 31.12.2003 from District & Sessions Court, Ahmedabad (Rural). While in service, he was served with charge-sheet. Unfortunately, the inquiry could not be concluded till he retired from service. The respondent No.2 – District Judge, Ahmedabad (Rural), therefore, granted provisional pension by his order dated 28.6.2004. Though the charge-sheet dated 24.7.2003 was served upon the petitioner, till date the inquiry could not be over. On this ground alone his retirement benefit have been withheld by the respondent. Hence, this petition.

The petitioner has prayed in this petition to direct the respondents to pay to the petitioner his death-cum-retirement benefit in view of Rule 145 of the Gujarat Civil Services (Pension) Rules 2002 (for short “the Rules”) along with interest thereon from the date of his retirement i.e. 31.12.2003.

Before approaching this Court the petitioner had approached the respondent No.2 – District Judge, Ahmedabad (Rural) by way of Application dated 10.1.2006 (Annexure : A) requesting him to sanction provisional payment of Death-cum-Retirement Gratuity. Reminder dated 28.4.2006 is there on the record of this case. The petitioner had also made Application dated 20.5.2006 (Annexure : B collectively) to the Registrar General of this Court for sanctioning the

provisional payment for Death-cum-Retirement Gratuity.

He had earlier approached this Court by way of Special Civil Application No.13941 of 2006, but the said petition was disposed of by this Court on 4.8.2006 (Annexure : C) on the statement being made at the Bar by learned Counsel Shri Pardiwala for the respondent – High Court that the subject matter was under active consideration of the High Court. Accordingly, learned Counsel Shri Panchal for the petitioner sought permission to withdraw that petition. The said request was granted and the petition was disposed of as withdrawn.

Thereafter, by letter dated 1.9.2006 the petitioner was informed that his request to grant provisional payment of death-cum-retirement gratuity was kept pending by the High Court till the Departmental Inquiry initiated against him is concluded. Hence, this second petition.

We have heard learned Counsel Shri Panchal for the petitioner, Shri Pardiwala for the respondents No.1 & 2 and Shri Gori for the respondent No.3.

In the instant case the charge-sheet was served in July, 2003, while the petitioner was in service. Later on petitioner retired on 31.12.2003. The provisional pension was sanctioned by the respondent No.1 on 28.6.2004 under Rule : 145(1) of the Rules. On expiry of period of two years the petitioner had applied to the respondent No.1 for granting him death-cum-retirement benefit in view of the provision of Rule : 145(2), but the respondent – High Court

decided to keep his claim pending till the inquiry was over. We would like to reproduce Rule : 145 as a whole, which reads as under :

145. Provisional payment of pension and gratuity where charge sheet is issued or judicial proceedings are instituted in respect of the Government employee against whom the departmental inquiry is pending : (1) In case of a Government employee against whom the Departmental Inquiry is initiated or prosecution is granted (i.e. charge-sheet is issued or FIR is filed, as the case may be) prior to retirement, but the departmental inquiry or prosecution, is not concluded (i.e. the order of the competent Authority on the report of the inquiry officer is not issued or the judgment of trial court is not delivered, as the case may be), the pension Sancitoning Authority shall sanction provisional payment of full amount of pension as determined under sub-rule (3) of rule 142. No provisional payment of death-cum-retirement gratuity shall be sanctioned.

(2) In case of a Government employee against whom the departmental inquiry is initiated or prosecution is granted (i.e. charge sheet is issued or FIR is filed, as the case may be) prior to retirement, but the departmental inquiry or prosecution, is not concluded (i.e. the order of the competent Authority on the report of the inquiry officer's not issued or the judgment of the trial Court is not delivered, as the case may be), and two years have lapsed since the date of retirement, the Pension Sanctioning Authority shall sanction the provisional payment of pension and

death-cum-retirement gratuity as under :

(i)100 per cent of pension as determined under sub-rule (3) of rule 142 if the same is not sanctioned under sub-rule (1);

(ii)100 per cent of gratuity as determiend under sub-rule (3) of rule 142 subject to withholding of after 10 per cent or fifteen thousand rupees which ever is less;

From the bare reading of Rule : 145 (2) it is clear that on expiry of period of two years the petitioner was entitled for the death-cum-retirement benefit. In our considered opinion the respondent High Court was wholly in error in withholding the rights of the petitioner guaranteed under Rule : 145(2) of the Pension Rules.

In view of the above discussion, this writ petition is allowed and the respondents are directed to release the death-cum-retirement benefit to the petitioner as early as possible and not later than 30.11.2006. Rule made absolute. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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